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FILE ONLY

The Spy Files

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Bill Dougherty Takes on the CIA

VILLA PARK, Calif. — When the man who identified himself only as "Jay" called to say he wanted a lawyer because he was selling American missile secrets to Communist powers, William A. Dougherty thought to himself: "Here we go again."

The burly 59-year-old sole practitioner's normal case load runs more to mail fraud or bank robbery or drunk driving, but by the time the call from "Jay" came in 1981, a bestselling book had given him some renown as a "spy lawyer."

In fact, it was Robert Lindsey's book "The Falcon and the Snowman," about Christopher Boyce and Andrew Daulton Lee — two young Californians who became spies for the Soviet Union — that led Jay to call Mr. Dougherty in the first place. The book styled Mr. Dougherty a "brilliant lawyer" with an excellent record of acquittals, even though Mr. Boyce got a 40-year sentence for espionage and conspiracy after his 1981 trial. Jay was impressed enough to pay a \$10,000 retainer — in cash.

For the next two years, he and the lawyer met in such places as The Flying, a small smokey bar near Mr. Dougherty's office in this community 50 miles from Los Angeles, to talk over strategy in Jay's audacious plan: he wanted the government to give him immunity for the sales he'd already completed of classified information, and then cooperate in turning him into a double agent against the Polish intelligence service, with whom he had been dealing.

For two years, Mr. Dougherty was the go-between, providing the CIA with descriptions of his client's actions and trying to negotiate the terms of a deal. Repeatedly, his client refused to come forward until the government promised immunity. Repeatedly, the government insisted it had to have the name first.

Unfortunately for Jay, and for Mr. Dougherty, time ran out. Last Oct. 15, the lawyer finally learned who Jay was when the authorities arrested

James D. Harper Jr., a computer consultant and failed businessman from California's high-tech "Silicon Valley" near San Francisco.

NOW, according to Mr. Dougherty's own estimate, "90 percent" of the material being used by a San Francisco grand jury to draw up the Harper indictment is derived from material Mr. Dougherty himself supplied to the authorities when his client was still anonymous. In fact, it was this information that helped the FBI to determine Jay's identity and make the arrest.

It has all led to a lot of Monday-morning quarterbacking in legal circles in Southern California about the way the genial attorney provided the government with so much information, and Mr. Dougherty's image hasn't been helped by the addition several weeks ago of a new co-counsel in the case, criminal defense lawyer Jerrold M. Ladar of San Francisco.

Mr. Dougherty says he had to supply something throughout the negotia-

tions to prove the genuineness of his client, and he also says he and Mr. Harper came close to striking a deal with the CIA along the lines of Mr. Harper's plan, but that the Justice Department vetoed it. The government's version of the case does not match this account.

But despite the controversy and criticism over Mr. Harper, who is expected to be indicted on espionage charges in San Francisco on Dec. 12, Mr. Dougherty maintains he did the right thing and he's not afraid of spy cases. "I just tell everybody, 'If you know any double agents, send them around.'"

It isn't only his cheerful, gruff irreverence that makes Mr. Dougherty stand out. He has never been content to be a routine criminal lawyer, driving from one local courthouse to another. Federal criminal cases take him to U.S. district courts throughout the country, he says, and usually he prefers to fly his own Seneca II from appearance to appearance.

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He works out of his sprawling home here, a modern structure with a red tile roof, nestled among lemon and olive trees in the heart of conservative Orange County. Inside, in his office next to the kitchen, files are spilling off his glass-tabled desk onto the floor.

He rarely sees clients there. Instead, appointments are kept in restaurants, bars or whatever coffee shop is close to where the person's case will be heard.

A curious assortment of magazines are scattered about his desk, including Soviet Life, Aviation Week and Architectural Digest. Bookshelves have rows of drunk-driving manuals next to copies of "The Falcon and the Snowman" and its recently published sequel, "The Flight of the Falcon," about Mr. Boyce's escape, further crimes and the trial on bank robbery charges where he was sentenced to another 28 years in federal prison (once again, he was represented by Mr. Dougherty). The U.S. and California codes are in the library in the garage, amidst tools and drills, on plywood shelves supported by bricks.

IN A SPARE bedroom in the rear, nicknamed "The Church Room," a part-time associate works every day on one of Mr. Dougherty's few civil suits, a fight by old-line members of a Laguna Beach, Calif., congregation to regain control of their church property from the church's new leadership, which includes Bhagwan Shree Rajneesh, the head of an Oregon commune. The case is set for an Orange County Superior Court trial next June. *Church of Religious Science of Laguna Beach v. Utsava Rajneesh Meditation Center*, 364655.

At 6-foot-1 with a white, flattop haircut that recalls his days as a Marine pilot, Mr. Dougherty may look like he approaches his cases with the tough precision of a drill sergeant. But it is his secretary, Deborah Schmitz, who keeps track of whether today's matter is a theft or an assault by a serviceman. Pursuing his hectic pace, driving from courthouse to courthouse in his 5-year-old Mercedes, Mr. Dougherty is as likely to forget a file at the courthouse as he is to remember the name of an obscure case.

But if the pace is hectic, Mr. Dougherty is used to it.

Mr. Dougherty came from a comfortable household. He developed a flair for flying as an 18-year-old Navy

aviation cadet, and later, as a Marine. After World War II, he returned to Bowdoin College in Brunswick, Maine, graduating in 1948.

He continued to an unremarkable career at Cornell Law School where the path of his grades, he says, looked like a sine curve. In 1950, his legal education was interrupted for two years when Mr. Dougherty was recalled to active duty during the Korean War. He had completed a second year of law school before he was injured and hospitalized for six months in 1952, when he suffered a broken back and foot after his Corsair crashed into some trees.

He graduated from Cornell in 1955, five years after he started, by then a war hero with two distinguished flying crosses and a chestful of air medals and ribbons.

Mr. Dougherty was an assistant U.S. attorney in Washington, D.C., before beginning work for Sen. Kenneth B. Keating, R-N.Y., with the Senate Judiciary Committee in 1959. He moved West in December of that year and spent three years in the Justice Department's Organized Crime and Racketeering Strike Force prosecuting Mafia members and garment-industry racketeers before starting private practice.

An inexperienced young lawyer named George Chelius brought him into the Boyce case in 1976. Mr. Dougherty took no fee, because it would be interesting work, he said.

EVENTUALLY, a lawyer who knew about Mr. Dougherty from the Boyce case got him involved in defending a Corona, Calif., businessman, Walter J. Spawr, and his wife, Frances. The couple were convicted in 1980 of secretly shipping high-technology laser mirrors to the Soviets in a foreign intrigue case that evoked Flash Gordon-esque images of death rays.

"He's always had a little bit of James Bond in him," says a former law partner, Robert Rickles, now an associate justice in San Bernardino with the California Court of Appeal.

But whether "Wild Bill," as he is sometimes called, measures up to the success rate of 007 — or even of the Bill Dougherty described in the Lindsey book — is a question that gets varying answers in the southern California legal community.

In the Boyce case, U.S. District Judge Robert J. Kelleher praised Mr. Dougherty's "professional manner."

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But his ex-opponent, former Asst. U.S. Attorney Joel Levine is not as admiring. "[He's] honest and well-meaning. There are no malicious bones in his body. That's about the best I could say," says Mr. Levine, now a name partner with Stilz, Boyd, Levine & Handzlik in Los Angeles. ("The Falcon and the Snowman" reports considerable personal hostility between the two opponents in the Boyce case, though Mr. Dougherty denies it.)

Despite the warmth and enthusiasm that his friends and admirers express, his handling of the Harper affair has left Mr. Dougherty's detractors with plenty of ammunition.

He flares, angry and defensive, at the slightest suggestion that he should have done a better job of shielding Mr. Harper's identity in his negotiations with federal investigators.

To show good faith and his client's genuineness, Mr. Dougherty says, he agreed that Mr. Harper would answer two sets of 20 questions each from the CIA. The first came in December 1981, the second in March 1982, he says. "They were what you'd expect," he says. "Who did you see? What did you take? Where did you go?"

As a precaution, he says he transcribed, then edited, his client's tape-recorded answers before handing them over to the CIA. Then he burned the tapes. "I didn't want them around — there might be fingerprints, or something."

According to Mr. Dougherty, CIA officials at one point said the agency intended to recommend to the Justice Department that Mr. Harper be given immunity. "I was ecstatic . . . the CIA was going to bankroll [Mr. Harper], then let him keep the proceeds. If he could get \$100,000 from the Poles for non-information, fine."

But in November 1982, negotiations stopped. "Bam! Everything stopped and the Department of Justice said 'No.' They just took a hard-nosed, bureaucratic attitude," Mr. Dougherty says.

According to Mr. Dougherty, the stalemate stemmed from the FBI's insistence that Mr. Harper give his name before he was granted immunity. In the meantime, government investigators began using the information provided by Mr. Dougherty to learn his client's identity, he says.

HE SCOFFS at suggestions that the plan backfired, and wound up with the government using Mr. Harper's information to uncover his identity. Mr. Dougherty claims the government agreed in writing that it "would do nothing" with the information provided by his client until June 22, 1982.

When asked the exact contents of the government's agreement, Mr. Dougherty reads a portion of a letter dated June 22, 1982, to him from John L. Martin, chief of the internal security section of the Department of Justice: "As we discussed it will not be possible for the government to engage in further discussion to reach an agreement with your client regarding the ultimate disposition of the matter until such time as he identifies himself."

"As mentioned in my previous letter to you, I will be obligated to act on the information in our possession if no accommodation is reached soon."

Mr. Dougherty explains, "He [Mr. Martin] just said it — 'will be obligated to act.' He's speaking in the future — he hasn't done anything yet."

When the agreement expired, Mr. Dougherty says, he talked to Mr. Martin and got a verbal 90-day extension.

He cites as further evidence of their "agreement" an Aug. 9, 1982, letter from Mr. Martin, reading, "My responsibility to national security re-

quires that I act on the information currently in my possession, including information provided by your client. Accordingly, I have today turned over all of this data for appropriate action to the FBI and other security and intelligence components of the government who have responsibility in such matters."

The letter shows, Mr. Dougherty says, that Mr. Martin "would seem to be a man of his word and did nothing before" Aug. 9.

The two letters, says Mr. Dougherty, are the government's written agreement to not use the information he was providing against his client. "In November [1981], he told me we'd already had over a year," says Mr. Dougherty. "Goddamn — I thought that was fair. They gave us over a year and didn't touch him."

Though assistant U.S. attorneys involved in the case won't comment on it — indeed, one of them, Asst. U.S. At-

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torney John Gibbons of San Francisco has accused Mr. Dougherty in a telegram of breaking a Northern District of California Court Rule by discussing the Harper affair — the government's version clearly differs. An FBI spokesman in San Francisco dismisses as "nonsense" Mr. Dougherty's talk of a written agreement by the government not to move against Mr. Harper when he was still anonymous. The CIA won't comment on the case.

At any rate, at some point in the course of the two-year adventure, a Polish defector identified Mr. Harper as the source of some of the information that Mr. Dougherty had provided to indicate his client's authenticity. By March 1983, the FBI began surveillance of Mr. Harper, and by May it had tapped his phone, picking up several conversations he had with Mr. Dougherty, who at that point still knew the man only as "Jay."

Two days before his client's arrest,

Justice Department officials contacted Mr. Dougherty, who once again confirmed that "Jay" was in possession of a "stash" of secret documents.

At the mention that he might have provided evidence against his client, Mr. Dougherty's voice trembles with anger. On this subject he is not the same personable, animated, freewheeling person. "No way did I ever give them evidence. I acted as the non-evidentiary go-between . . . [and] only gave what my client told me to give."

What about the Monday-morning quarterback notion that Mr. Harper shouldn't have answered anything from the government until immunity was assured?

"Maybe I should have — I don't know," the lawyer says, speaking more softly. "But I want to keep dialogue open . . ."

Besides, he adds, "My client wanted me to keep trying."